

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO: 09-041
v.	*	SECTION: "I"
GRALEN BENSON	*	

* * *

FACTUAL BASIS

If this case were to proceed to trial, the government would prove the defendant, **GRALEN BENSON ("BENSON")**, guilty beyond a reasonable doubt of the one-count Indictment filed herein, which charges the defendant with a violation of the Federal Gun Control Act under 18 U.S.C. §§ 922 (g)(1) and 924 (a)(2). The government would establish through credible and competent witnesses and evidence the following facts:

On Sunday, November 16, 2008, at approximately 4:00 p.m., three vehicles in the New Orleans Parish Police Department ("N.O.P.D.") First District Narcotics Unit were on a proactive patrol when they encountered the defendant, **BENSON**. The units patrolled Frenchmen Street near the North Roman Street intersection. Sergeant Daniel Scanlon ("Sgt. Scanlon") and Detective Gregory Lapin ("Det. Lapin") observed three subjects standing on Frenchmen Street near the corner of the intersection of Frenchmen Street and North Johnson Street. The officers will testify that they

witnessed what appeared to be a drug transaction taking place. Just as the individuals appeared to be exchanging items, the officers heard an unknown subject whistle. The officers knew from their experience that a whistle was a common street tactic used to alert subjects in the area as to the presence of law enforcement.

The three individuals immediately began walking in different directions. **BENSON** turned to his left, threw a jacket to the ground in front of the steps of 2000 Frenchmen Street, and began to quickly walk towards the steps. Wanted subject #1 turned and began walking down Frenchmen Street away from the officers. Wanted subject #2 began walking towards North Johnson Street. **BENSON** began to run up the steps leading into the residence located at 2000 Frenchman Street.

Det. Lapin pursued wanted subject #1 up Frenchmen Street where the subject was lost. Sgt. Scanlon ran toward **BENSON**, who was quickly walking up the steps. **BENSON** pushed back a mid thigh length jacket and was seen frantically digging in his pockets. Sgt. Scanlon clearly saw the butt of a handgun with an extended magazine in the front of waistband. Seeing that **BENSON** was armed, Sgt. Scanlon slowed his approach. **BENSON** reached the door and unlocked it while Sgt. Scanlon notified other detectives at the scene that **BENSON** was armed.

Sgt. Scanlon unlocked the gate with the key that was left behind by **BENSON** and attempted to open the wooden door of the residence. The door was locked and so Sgt. Scanlon forced entry into the residence and was closely followed by Detectives Julio Alonzo (“Det. Alonzo”) and Colette Booth (“Det. Booth”). Upon entering, the officers observed a black female, later identified as Mary Benson (“Mrs. Benson”), walking towards the door with a walker. Almost immediately, **BENSON** emerged from the rear doorway of Mrs. Benson’s bedroom from the rear of the residence. He was taken into custody by Sgt. Scanlon and Det. Alonzo in the den. A quick pat down of **BENSON** by

Sgt. Scanlon in the den revealed that he was no longer armed. Sgt. Scanlon and Det. Booth conducted a quick security check of the rest of the residence for any additional persons. No one was found and the officers returned to the den.

If called to testify, Mrs. Benson would state that she lived at the residence with only her grandson, **BENSON**, and she granted permission to the officers to search the residence. In addition, she signed a consent to search form presented to her by the officers. Mrs. Benson also advised the officers that she was in her bed when her grandson, **BENSON**, opened her front door and ran to the rear of the residence. She then heard the banging at the door and she was getting up to get it when the door was broken open. Her grandson then ran from the rear of the residence to the den where he was taken into custody. Sgt. Scanlon asked Mrs. Benson if she owned a gun or if the had a gun in the house. She said that she did not.

While searching the third room in the back where **BENSON** had retreated, the officers noticed a ledge over a closet in the hallway between what was identified as **BENSON's** bedroom and the kitchen. The ledge was too high for the officers to reach but appeared to be within reach of **BENSON**, who is approximately 6'5" tall. Det. Lapin was lifted to the ledge at which time he located a fully loaded Beretta, Model 92FS, 9mm handgun, serial number BER3902542Z with an extended magazine. Sgt. Scanlon identified it as the weapon that was carried by **BENSON** into the residence.

A name check of **BENSON** was initiated in the National Crime Information Computer. That checked revealed that **BENSON** pled guilty in Orleans Parish to one felony count of simple possession of heroin and one felony count of simple possession of cocaine (Orleans Parish Criminal Docket No. 470-862, Section "D") and one felony count of simple possession of heroin (Orleans

Parish Criminal Docket No. 470-786, Section “D”) on October 25, 2007 and received 5 years of probation.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent Michael Eberhardt would testify as an expert that the Beretta, Model 92FS, 9mm handgun serial number BER3902542Z found in Louisiana on November 16, 2008 was not manufactured in the state of Louisiana, therefore, it had to have crossed state lines and affected interstate commerce. N.O.P.D. Officer Valerie Kees also successfully test fired the Beretta, Model 92FS, 9mm handgun, serial number BER3902542Z, and the firearm met the legal definition of a “firearm” as defined in Title 18, U.S.C. § 921(a)(3).

APPROVED AND ACCEPTED:

GRALEN BENSON	Date
Defendant	

SAMUEL J. SCILLITANI	Date
Attorney for Defendant	

EDWARD J. RIVERA	Date
Attorney for the United States of America	